

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
_____)	

REPLY COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTA)¹ submits its reply comments through the undersigned in the above-referenced dockets.

DISCUSSION

A number of groups representing consumers with disabilities and other low income consumers² submitted comments urging the Federal Communications Commission (Commission or FCC) to grant requests made by AT&T and TracFone, which would result in separate processes for obtaining designation as an eligible telecommunications carrier (ETC) for receipt of low income universal service support. They argue that a separate ETC designation process for receipt of low income support will increase the number of carriers, including resellers, that provide services, particularly wireless services, to qualifying low income consumers, thereby enabling a greater number of low income consumers to benefit from wireless telephone service.

¹ USTA is the nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data, and video services over wireline and wireless networks.

² See comments submitted by the American Association of People with Disabilities and Self Help for the Hard of Hearing, the American Foundation for the Blind, League of United Latin American Citizens, the National Congress of American Indians, and the Telecommunications for the Deaf.

USTA is not opposed to increasing the availability of Lifeline services to low income consumers, but stresses that creating a separate ETC designation for low income support is not appropriate for policy reasons and, moreover, is not permitted by the Telecommunications Act of 1996 (1996 Act).³ The Commission, however, has already adopted several measures in its Lifeline Order,⁴ in addition to the existing federal default eligibility criteria, to increase Lifeline and Link-Up subscription rates. Specifically, the Commission adopted three recommendations from the Federal-State Joint Board on Universal Service (Joint Board) – one is an income-based criterion that would make consumers eligible to participate in Lifeline/Link-Up if their income is at or below 135% of the Federal Poverty Guidelines and the other two are means-tested programs that establish participation in other programs, namely the Temporary Assistance to Needy Families program and the National School Lunch’s free lunch program, as qualifiers for Lifeline/Link-Up.⁵ Similarly, in its Lifeline Order the Commission adopted the Joint Board’s recommendation to provide outreach guidelines to states and carriers to increase Lifeline subscriptions.⁶ The guidelines encourage the use of materials and methods designed to reach households that do not currently have telephone service, the development of advertising that can be read or accessed by non-English speaking populations, and the coordination of outreach efforts with governmental agencies that administer any of the relevant government assistance programs.⁷ Accordingly, USTA urges the Commission to find that the requested changes in the

³ See USTA Comments at 2-4.

⁴ *Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 03-109 (rel. Apr. 29, 2004) (Lifeline Order).

⁵ See *id.* ¶¶2, 10, 13. See also Verizon Comments at 6.

⁶ See Lifeline Order, ¶¶44-49. See also TDS Telecom Comments at 7.

ETC designation process are simply not necessary at this time, given the measures implemented in the Lifeline Order, to ensure that low income consumers have access to Lifeline services.

In addition to the policy reasons cited in its Comments, USTA reiterates here that the 1996 Act does not provide for the limited ETC designation process that AT&T seeks in its Petition for Limited Reconsideration.⁸ Specifically, AT&T requests that carriers seeking low income support should only be required to meet the requirements of section 214(e)(1) in order to be designated as an ETC.⁹ In fact, what AT&T seeks to do is put the proverbial cart in front of the horse. AT&T's reliance on section 214(e)(1) is misplaced because the purpose of that section is to explain that a carrier already designated as an ETC "shall be eligible to receive universal service support" and to identify what such a carrier is required to do – *i.e.*, offer supported services and advertise for such services.¹⁰ Section 214(e)(1) does not set forth the requirements for actually being designated as an ETC; that is left to sections 214(e)(2) and (3). At issue predominantly in any petition for designation as an ETC is section 214(e)(2) and its public interest requirement. USTA agrees with NTCA that what AT&T is in effect proposing when it requested that it only be required to meet the requirements of section 214(e)(1) "is that the 'public interest' standard in section 214(e)(2), [sic] not apply to carriers seeking only low-income ETC designation petitions in rural service areas."¹¹ USTA also agrees with NTCA that a determination that an ETC designation is in the public interest is mandatory and that such a

⁷ See Lifeline Order, ¶45.

⁸ See *Lifeline and Link-Up*, Petition of AT&T Corp. for Limited Reconsideration, WC Docket No. 03-109 (filed July 21, 2004) (Petition for Limited Reconsideration or Petition).

⁹ See *id.* at 4.

¹⁰ 47 U.S.C. §214(e)(1).

¹¹ NTCA Comments at 4.

determination is just as important for purposes of low-income support as it is for high-cost support.¹² If Congress had wanted to eliminate the public interest requirement for obtaining an ETC designation when a carrier intended to provide Lifeline/Link-Up services, it could have done so. Yet, Congress made no such distinction. Carriers seeking an ETC designation in order to receive universal service support from the low income mechanism must comply with the ETC designation requirements to which all carriers are subject, whether it is for high cost support, low income support, or both.

Contrary to AT&T, TracFone maintains in its Comments that the Commission's rules need not be modified "to permit separate ETC certification criteria for carriers seeking only low income support from the USF."¹³ In addition, TracFone argues that by advising the Commission that it will utilize its ETC status only to provide Lifeline service to qualified low income consumers, it will accept a Commission limitation of its requested ETC status to receipt of universal service support from the low income mechanism.¹⁴ Despite these claims by TracFone, its requests are effectively no different from what AT&T seeks – *i.e.*, a separate ETC designation process for receipt of low income support. TracFone's statements that it would agree to limit its universal service support to disbursements from the low income mechanism do not change the ETC designation requirements of the 1996 Act or the Commission's obligations to ensure those requirements are met. Moreover, there is nothing to prevent TracFone from changing its position at some later date after it had been designated as an ETC, despite its agreement that its ETC designation was based on the condition of receiving low income support only, and seeking

¹² *See id.*

¹³ TracFone Comments at 2.

¹⁴ *See id.*

support from the high cost mechanism because an ETC, once designated, is eligible to receive support from either the high cost mechanism, the low income mechanism, or both mechanisms. Similarly, conditioning a grant of ETC status to TracFone on receipt of low income support only would be in violation of the section 214(e)(1) requirement to offer the supported services under section 254(c).¹⁵ Certainly offering service that is discounted through the Lifeline program is one way of fulfilling the 1996 Act's universal service mandate, as long as all the supported services are included in the Lifeline offering, but the 1996 Act also mandates that an ETC provide supported services to the entire customer base, whether or not a customer is eligible to participate in the Lifeline program. Therefore, offering only Lifeline service would not be in compliance with the requirements of section 254(c). So, TracFone's statement that "once designated as an ETC, [it] would not be required to participate in the high cost support program"¹⁶ is inaccurate. If TracFone was designated as an ETC in a high cost area, it is not obligated to seek support from the high cost mechanism, but it is certainly obligated to provide all supported services to consumers in the high cost area, not just Lifeline services. As noted previously, there would be no guarantee that TracFone would not seek support from the high cost mechanism if it felt it needed the support. Yet, if TracFone has its way, it would not have acquired its ETC designation subject to the same requirements that other ETCs are subject.

¹⁵ Section 254(c) states that services supported by federal universal service "shall consider the extent to which such telecommunications services (A) are essential to education, public health, or public safety; (B) have through the operation of market choices by customers been subscribed to by a substantial majority of residential customers; (C) are being deployed in public telecommunications networks by telecommunications carriers; and (D) are consistent with the public interest, convenience, and necessity." 47 U.S.C. §254(c)(1).

¹⁶ TracFone Comments at 5.

Finally, USTA notes that establishing a separate ETC designation process for carriers that only seek to provide Lifeline/Link-Up services and thus only seek support from the low income mechanism would complicate the administration of the Universal Service Fund (USF or Fund),¹⁷ and possibly state universal service funds. USTA agrees with TDS about the administrative complexity that separate designations would introduce. Notably, TDS explains that “[a]t a minimum, the Fund administrator would need to maintain separate databases of carriers designated to receive separate types of universal service support and would need to develop a mechanism to try to prevent . . . double-recovery of Lifeline support”¹⁸ Importantly, double recovery of Lifeline support would lead to expansion of the Fund at a time when the Commission seeks to control its growth.

¹⁷ The Joint Board has also addressed the issue of administrative complexity that would result from separate ETC designations, agreeing with the Commission, which previously stated that “a single support mechanism with a single administrator following similar rules will have significant advantages in terms of administrative convenience and efficiency.” *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, FCC 03J-2, ¶61 (rel. Apr. 2, 2003) (citing *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8971(1997)).

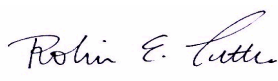
¹⁸ TDS Comments at 6. TDS cited one example of how double recovery could occur. It noted that the impact of establishing separate ETC designations is likely to be a large number of wireless carriers seeking a Lifeline-only ETC designation. *Id.* at 5-6. “Under this scenario, it would become increasingly difficult and administratively complex, as more wireless carriers market Lifeline-supported wireless services, to enforce the requirement that eligible subscribers receive Lifeline support for only one line. This could result in the payment of duplicative Lifeline support for qualifying consumers.” *Id.*

CONCLUSION

For the reasons states above and in its Comments, USTA urges the Commission to deny AT&T's Petition and TracFone's ETC Petitions.

Respectfully submitted,

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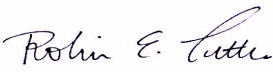
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CERTIFICATE OF SERVICE

I, Robin E. Tuttle, do certify that on October 4, 2004, the aforementioned Reply Comments of The United States Telecom Association were electronically filed with the Commission through its Electronic Comment Filing System and were electronically mailed to the following:

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